

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 152 OF 2005

Firtu Jaganu Jaiswal Appellant.

Versus

The Mumbai Municipal Corporation
and Ors. ... Respondents.

Mr. Rajesh N. Kachare for the Appellant.

Ms. Geeta Jogalekar for the Respondents.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

Admit. Learned Counsel appearing for Respondents waives service. Taken up for hearing forthwith.

2. The Appellant is original Plaintiff. In the suit filed by the Appellant / Plaintiff in the trial Court the challenge is to the action under Section 314 of the Mumbai Municipal Corporation Act, 1888. By the order impugned, the learned trial Judge has declined to grant ad-interim relief in favour of the Appellant.

3. Learned Advocate appearing for the Appellant has

placed reliance on documents annexed to the Civil Application No. 457 of 2005. In the application, it is contended that in respect of the same suit structure a notice under Section 351 of the Bombay Municipal Corporation Act, 1888 was issued in the year 1980. Reliance is also placed on extract from the Cadastral Survey Sheet where it is shown that the suit structure is not situated in the road line / public road. Learned Advocate appearing for the Appellant submitted that the said two documents are very relevant for deciding prayer for interim relief as the action of Respondents is under Section 314 of the said Act of 1888.

4. Learned Advocate for the Respondents relied on the affidavit dated 11th April, 2005 filed by the Respondents. In the said affidavit, it is contended that the notice under Section 351 of the said Act of 1888 relied upon by the Appellant was in respect of the another structure. Learned Advocate submitted that no case is made out for grant of any ad-interim relief and the trial Judge has rightly passed the impugned judgment and order.

5. The Appellant has placed reliance on the aforesaid two documents which are produced as additional

evidence in this appeal. The Appeal from Order is only against the order refusing to grant ad-interim relief. On the face of it, the said documents are relevant for deciding the prayer for interim relief. Whether the said documents really help the case of the Appellant or not will have to be decided by the learned trial Judge. Considering the facts and circumstances of the case, instead of keeping this appeal pending, it is necessary to permit the Appellant / Plaintiff to rely upon the said documents for the purpose of prayer for grant of ad-interim relief. Only for the purpose of enabling the Appellant to rely upon the said documents, the impugned order will have to be quashed and set aside and the prayer for ad-interim relief will have to be considered afresh in the light of the said two documents which are annexed to the said Civil Application No. 457 of 2005. Hence I pass the following order :

- (a) Impugned Judgment and Order is quashed and set aside.
- (b) Appellant is permitted to place on record of the trial Court the documents annexed to the Civil Application No.457

of 2005.

- (c) Both the parties will appear before the learned trial Judge on 25th April, 2005 at 2.45 p.m. The learned trial Judge will consider the prayer for ad-interim relief afresh. The learned trial Judge will consider the said prayer and pass appropriate order within a period of two weeks from the date fixed for appearance.
- (d) Till the prayer for ad-interim relief is considered afresh by the trial Court, both the parties will maintain a status quo in all respect in respect of the suit structure.
- (e) All contentions of the parties in pending notice of motion are kept open.
- (f) Appeal is partly allowed in the above terms with no order as to costs.

Parties and the concerned Court to act on an authenticated copy of this order.

Sd/-

(A. S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 457 OF 2005
IN
APPEAL FROM ORDER NO. 152 OF 2005

Firtu Jaganu Jaiswal Appellant.

Versus

The Mumbai Municipal Corporation
and Ors. ... Respondents.

Mr. Rajesh N. Kachare for the Appellant.

Ms. Geeta Jogalekar for the Respondents.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

In view of the order passed in the Appeal from
Order, this Civil Application is disposed of.

Sd/-

(A. S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 101 OF 2005
IN
APPEAL FROM ORDER NO. 152 OF 2005

Firtu Jaganu Jaiswal Appellant.

Versus

The Mumbai Municipal Corporation
and Ors. ... Respondents.

Mr. Rajesh N. Kachare for the Appellant.

Ms. Geeta Jogalekar for the Respondents.

CORAM : A. S. OKA, J.

DATED : 19TH APRIL, 2005.

P.C.:

In view of the order passed in the Appeal from Order, this Civil Application does not survive. Hence rejected.

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Sd/ -

(A. S. OKA, J.)